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Fashions Outlet of America, Inc.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANN OTSUKA, an individual; JANIS KEEFE, ) Case No.: C-07-02780 SI  
an individual; CORINNE PHIPPS, an )  
individual; and RENEE DAVIS, an individual; ) **STIPULATION AND ORDER**  
individually and on behalf of all others similarly ) **REGARDING CLASS NOTICE**  
situated, ) **TO NEW MEMBERS**

Plaintiffs,  
vs.

POLO RALPH LAUREN CORPORATION; a )  
Delaware Corporation; POLO RETAIL, LLC., a )  
Delaware Corporation; POLO RALPH )  
LAUREN CORPORATION, a Delaware )  
Corporation, doing business in California as ) **JUDGE: Hon. Susan Illston**  
POLO RETAIL CORP; and FASHIONS ) **LOCATION: Courtroom 10, 19<sup>th</sup> Floor**  
OUTLET OF AMERICA, INC., a Delaware ) **450 Golden Gate Avenue**  
Corporation ) **San Francisco, California 94102**

Defendants.

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*Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.*

Case No. C-07-02780-SI

STIPULATION AND ORDER REGARDING CLASS NOTICE TO NEW MEMBERS

1 The parties enter into this stipulation regarding adding new members to the existing  
2 certified Class, as the Class defined in the Court's Order Granting Plaintiffs' Motion for Class  
3 Certification of July 8, 2008.

4 **I. Additional Class Members Will Be Added to the Class.**

5 The new members are prior Polo employees who terminated employment with Polo since  
6 August 31, 2009.

7 **II. The Parties Agree On The Expiration of the Class Period for Non-Stayed Claims.**

8 The class period for all non-stayed claims expired on January 31, 2010.

9 **III. The Parties Agree that Defendants Must Produce Social Security Numbers For**  
10 **A Limited Number Of Class Members**

11 The parties agree that Defendants will promptly produce Social Security Numbers directly  
12 to Rosenthal & Co., the Class Action Administrator, for the limited number of individuals whose  
13 notices are returned as undeliverable. As soon as possible, Rosenthal & Co. will send out notices  
14 to these individuals.

15 **III. Class Notice Form**

16 The parties agree that the attached form, "Notice of Pendency of Class Action" will be  
17 sent.

18 **IV. Timing Of Class Notice**

19 The Class Administrator, Rosenthal & Co., will mail the attached, agreed-upon, Notice to  
20 the new class members on or before February 23, 2010. Class members may opt out by mailing in  
21 the form on or before March 9, 2010.

22 **V. Conclusion And Summary Of Stipulation**

23 The parties, through their respective attorneys of record, hereby stipulate, with the Court's  
24 permission, that,

- 25 1. Additional ex-Polo employees will be added to the class, which is those individuals  
26 who terminated employment with Polo since August 31, 2009;  
27 2. The class period for all non-stayed claims expired on January 31, 2010;  
28

- 1           3.     The attached Notice will be sent;  
2           4.     Class notice will be mailed on or before February 23, 2010;  
3           5.     Class members will have 13 days from the date of mailing Class notices (i.e.,  
4 March 9, 2010) to postmark and mail opt-out notices to Rosenthal & Co.

5 **IT IS HEREBY STIPULATED.**

6 Dated: February 17, 2010

The Law Office of Patrick R. Kitchen

7 */s/ Patrick R. Kitchen*

8 By: \_\_\_\_\_

9 Patrick R. Kitchen, Esq.  
10 Attorneys for Plaintiffs' Class

11 Dated: February 17, 2010

Greenberg Traurig, LLP

12 */s/ William J. Goines*

13 By: \_\_\_\_\_

14 William J. Goines, Esq.  
15 Attorneys for Defendants Polo Ralph Lauren  
16 Corporation; Polo Retail, LLC; Polo Ralph  
17 Lauren Corporation, doing business in  
18 California as Polo Retail Corporation; and  
19 Fashions Outlet of America, Inc.

20  
21 **IT IS SO ORDERED.**

22   
23  
24

25 \_\_\_\_\_  
26 Judge, U.S. District Court  
27  
28

# **THIS NOTICE AFFECTS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.**

## **NOTICE OF PENDENCY OF CLASS ACTION**

### **NOTICE TO FORMER EMPLOYEES OF POLO RALPH LAUREN CORPORATION, POLO RETAIL, LLC, POLO RETAIL CORP., AND FASHIONS OUTLET OF AMERICA, INC. IN CALIFORNIA**

Our records show you may be a member of a Class for whom a class action has been filed in the United States District Court for the Northern District of California, entitled *Otsuka, et al., v. Polo Ralph Lauren Corporation, et al.*, Case No. C 07-02780 SI. This is a lawsuit brought on behalf of certain former employees of Polo Ralph Lauren Corporation, Polo Retail, LLC, and Fashion Outlets of America, Inc. (otherwise known collectively as “Defendants”). The Class representatives are Janis Keefe, Corinne Phipps and Renee Davis (the Plaintiffs), all former employees of the defendants.

#### ***Who are members of the Class?***

Class members are certain former sales associates and cashiers/customer service representatives who worked at a Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Retail Corp. and/or Fashion Outlets of America, Inc. retail or outlet store in California between May 30, 2002 and the present. This case is a class action that seeks monetary recovery for alleged unpaid wages, including unpaid overtime wages, waiting time penalties and punitive damages.

#### ***What is the lawsuit about?***

Plaintiffs allege Defendants violated California’s employment laws and failed to pay their employees all of their wages. Defendants deny the allegations in the Complaint and assert they followed California and Federal law, and paid employees all of their wages. The Court has not yet determined whether Plaintiffs’ or Defendants’ contentions are correct, or whether Defendants are liable to pay any monetary amounts.

#### ***What do Plaintiffs claim?***

- Polo committed fraud by making false promises to certain of its employees regarding their eligibility to receive premium overtime pay;
- Polo failed to pay employees for the time they spent waiting for loss prevention or “bag check” inspections after they had clocked out;
- Polo failed to permit employees to take all of their rest breaks;
- Polo failed to pay premium overtime wages to certain former employees;
- Polo failed to timely pay all wages due at the end of Class members’ employment;
- Polo failed to maintain accurate pay records for employees;
- Polo misclassified certain sales employees as being exempt from being entitled to premium overtime pay;
- Polo breached contracts with certain of its former employees; and

- Polo violated California's Unfair Competition Law.

### ***Class Action Ruling***

The Court has ruled that this lawsuit may be maintained by the representative Plaintiffs on behalf of the following Class:

"All former sales associates and cashiers who were employed in defendants' retail and outlet stores in the state of California between May 30, 2002 and the conclusion of this action."

The Court also certified two subclasses of former employees of Defendants:

1. "All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program."

### ***Estimated Recovery***

Plaintiffs seek to recover back wages, including unpaid wages for time spent waiting for and undergoing loss prevention inspections, overtime wages, civil penalties and punitive damages, as well as interest on these amounts, attorneys' fees and litigation costs. Individual Class member's potential recoveries will depend on several factors, including but not limited to matters such as the amount of time the Class members worked for the Defendants. No trial has yet been held and the merits of Plaintiffs' claims have not been decided.

### ***Rights and Obligations of Class Members***

If you fall with the definition of the Class, you will automatically become a Class member in this lawsuit. **If you wish to be considered a member of the Class, you do not need to do anything further at this time, and you should NOT SEND a request to opt out of the Class.**

As a Class member:

- You will be represented by the named Class representatives and the attorneys representing the Class. You will not be charged for this representation. If Plaintiffs win, Plaintiffs' counsel will ask the Court that they be paid reasonable compensation for their representation of the Class. However, you may enter an appearance through your own attorney, or on your own, by mailing a Notice of Appearance to the Clerk of the Court, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, CA 94102. You may also ask the Court for permission to appear as named Class co-representative.
- You will receive notice of any rulings affecting your membership in the Class and notice of any proposed settlement or dismissal of Class claims or any judgment rendered for Plaintiffs or Defendants.

- You will be bound by a judgment or other final disposition of the class action lawsuit, whether that disposition is favorable or not.
- You will be entitled to participate, upon meeting prerequisites set by the Court, in a distribution of any monetary damages recovered in the litigation.
- You should retain all records and documents pertaining to the subject matter of this case, including all wage and employee documents.
- You will be deemed to have consented to Defendants' disclosing certain personally identifiable information about you from Defendants' records to counsel for the Class so they may represent you and determine the amount of any monetary recovery to which you may be entitled. Defendants have and/or will disclose your name, address, dates of employment, payroll records, earnings records and timekeeping records.
- You should notify the Claims Administrator, Rosenthal & Company LLC, by fax (415) 892-7354 or by mail: *Otsuka v. Polo Class Action* Administrator, c/o Rosenthal & Company LLC, P.O. Box 6177, Novato, CA 94948-6177 of any change in your name, mailing address, telephone number or email address.

#### ***Election to Not Participate in the Class ("Opting Out")***

If you want to be excluded from the Class, you must send a written notice of your intent to exclude yourself from the Class, with the information included below, by mail postmarked no later than March 9, 2010, to: *Otsuka v. Polo Class Action* Administrator, c/o Rosenthal & Company LLC, P.O. Box 6177, Novato, CA 94948-6177.

Please include your full name (and if your name has changed since you were employed by Defendants, your former name), your current mailing address, phone number, email address, and a statement that you wish to be excluded from the *Otsuka v. Polo Ralph Lauren* lawsuit.

The choice to exclude yourself from the Class has certain consequences, and you may wish to consult an attorney regarding this choice. If you elect to be excluded: (1) you will not be bound by any judgment in the case and will retain any claims you may have against Defendants, subject to applicable statutes of limitations, and (2) you will not share in any monetary or other recovery that might be paid if the Class representatives are successful at trial or from any settlement.

#### ***Status and Further Information***

This lawsuit may continue from this date for a year or longer. If you have any questions concerning the matters in this Notice, please contact Plaintiffs' counsel at The Law Office of Patrick R. Kitchen, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111, [prk@kitchenlegal.com](mailto:prk@kitchenlegal.com), (415) 677-9058.

The pleadings and all other records of this litigation may be examined and copied any time during the regular office hours in the office of the Clerk of the Court, United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102.

**DO NOT CALL OR WRITE THE COURT FOR ADDITIONAL INFORMATION ABOUT THE CASE.**